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In the Supreme Court of the United States

OCTOBER TERM, 1954

FEDERAL POWER COMMISSION, PETITIONER

v.

THE STATE OF OREGON, THE FISH COMMISSION OF OREGON, THE OREGON STATE GAME COMMISSION

PORTLAND GENERAL ELECTRIC COMPANY,
INTERVENOR

PETITION OF PORTLAND GENERAL ELECTRIC COMPANY TO INTERVENE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

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PETITION OF PORTLAND GENERAL ELECTRIC COMPANY TO INTERVENE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Portland General Electric Company, Intervenor in the United States Court of Appeals for the Ninth Circuit, prays that it be permitted to intervene herein and join in the prayer of the Solicitor General on behalf of the Federal Power Commission that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit setting aside an order issued December 21, 1951, by the Federal Power Commission granting a license to Portland General Electric Company for the construction, operation and maintenance of a hydroelectric project on the Deschutes River in Oregon.

STATEMENT

The required statements under the Rules of the Supreme Court, including the opinions below, jurisdiction, questions presented, statutes involved, and the statement of the case below are fully set forth in the Petition of the Solicitor General for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

REASONS FOR GRANTING THE WRIT

It is manifest from the record in this case that there is error in the opinion and decision of the United States Court of Appeals for the Ninth Circuit and that this Honorable Supreme Court should take jurisdiction of this cause for the purpose of correcting such errors, on the grounds and for the reason set forth in the Petition for Writ of Certiorari filed herein by the Solicitor General on behalf of the Federal Power Commission, succinctly enumerated as follows:

1. That the United States, as the owner of the lands on both sides of the Deschutes River at the site of the Pelton Project should not be encumbered with or hindered by local legislation in the use and occupancy of such Government-owned land.

2. That the *Desert Land Act of 1877*, 19 Stat. 377 (43 USC 321) applies only to "public lands and waters of the United States" and under authority cited in the Solicitor General's brief should not apply to lands which have been set apart and reserved from the public domain. When lands are reserved, such as the Indian Reservation on the west side of the Deschutes River, and the lands reserved for power

purposes on the east side of the Deschutes, they are no longer "public lands" and are not within the contemplation of the Desert Land Act.

3. At the very most, the Desert Land Act purported to permit the states to have supervision over certain water sources but only until such time as the Federal Government determined to assert its own jurisdiction thereover. This, however, only applied to the "public domain" and would not affect in any way reserved lands.

4. That the ruling of the Court below failed to give recognition to the decision of this Court in *First Iowa Hydro-Electric Coop. v. Federal Power Commission,* 328 U.S. 152, which determined that the Laws of the Federal Government were paramount over State statutes and State Commissions in exercising jurisdiction over waters and lands owned by the United States, through its agency, the Federal Power Commission.

5. That in any event, under the Treaty between the United States and the Warm Springs Indians of June 25, 1855, *(Statutes at Large, Treaties and Proclamations of United States, Volume XII, page 964)* to the effect that "the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians," the Fish Commission of the State of Oregon and the Oregon State Game Commission would have no right to assert jurisdiction of any kind by reason of the fish in the Deschutes River at the Pelton site. Any other interpretation would be contrary to the decision of

this Court in *United States v. Winans*, 198 U.S. 371, 49 L. Ed. 1089, 1092.

CONCLUSION

For the foregoing reasons, and for the reasons and under the authorities set forth in the petition for Writ of Certiorari filed herein by the Solicitor General of the United States, Portland General Electric Company respectfully joins in the prayer of the Solicitor General that the Writ of Certiorari be granted. Portland General Electric Company also prays that it be permitted to intervene herein if the Petition for Writ of Certiorari is granted, and that the said Intervenor be permitted to file briefs in this Honorable Court.

Respectfully submitted,

CLARENCE D. PHILLIPS

Attorney for Portland General Electric Company